

BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
602.364.1102

1
2
3
4 MICHAEL R. SCHAEFER dba ARCADIA LODGE,)
5 Appellant,) Docket No. 1891-03-S
6 vs.)
7 ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
8 Appellee.) FINDINGS OF FACT AND
9) CONCLUSIONS OF LAW
10)
11)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)

The State Board of Tax Appeals, having considered all evidence and arguments presented, and having taken the matter under advisement, finds and concludes as follows:

FINDINGS OF FACT

In June, 2000, Michael R. Schaefer dba Arcadia Lodge ("Appellant") acquired a transaction privilege tax license and began operating a motel he had purchased in Kingman, Arizona. The records of the Arizona Department of Revenue (the "Department") show that, between June of 2000 and July of 2001, Appellant filed late all but two of the transaction privilege tax returns due under the transient lodging classification (A.R.S. § 42-5070).¹ All the returns showed tax due on the gross receipts from the operation of the motel. Appellant paid the tax due with each return either late or not at all. Subsequently, the Department assessed Appellant additional tax, interest and penalties for late filings and late payments.

¹ A. Except as provided in subsection B, C or D of this section, the taxes levied under this article are due and payable monthly on or before the twentieth day of the month next succeeding the month in which the tax accrues and are delinquent:

1. If not postmarked on or before the twenty-fifth day of the month.
2. If not received by the Department on or before the business day preceding the last business day of that month for those taxpayers electing to file by mail.
3. If not received by the Department on the business day preceding the last business day of that month for those taxpayers electing to file in person.

1 Appellant's father, on behalf of Appellant, requested that all penalties be waived and that the
2 Department accept payment in full for taxes and interest on the condition that all returns would be filed no
3 later than October 20, 2001. The Department denied that request. Nevertheless, Appellant's father
4 remitted to the Department a check dated October 10, 2001 with the notation "Satisfaction of Unpaid
5 Balance and Interest, per \$8333.43 tax lien, Penalty Abated." The Department endorsed and cashed the
6 check but did not abate the penalties.

7 Appellant protested the denial of the penalty abatement to a hearing officer who upheld the
8 denial. Appellant then protested to the Director of the Department who upheld the hearing officer's
9 decision. Appellant now timely appeals to this Board.

10 DISCUSSION

11 The issue before the Board is whether Appellant is liable for the penalties assessed in this case.

12 Appellant argues that his failure to timely file returns and pay the applicable tax was due to
13 reasonable cause, and that, in any event, the Department is estopped from collecting the penalties
14 assessed because it cashed the check from Appellant's father.

15 A.R.S. § 42-1125.A provides that if a taxpayer files a return late, the penalty "shall be added to
16 the tax" unless the failure is due to reasonable cause and not willful neglect. A.R.S. § 42-1125.D
17 provides that a person who pays the tax late "shall pay a penalty of ten per cent" unless the failure is due
18 to reasonable cause and not willful neglect. The language of A.R.S. § 42-1125.A and D is clear and
19 unambiguous.

20 "Reasonable cause" is generally defined to mean the exercise of "ordinary business care and
21 prudence." *Daley v. United States*, 480 F.Supp. 808 (D.N.D 1979). Under A.R.S. § 42-1125(S), which
22 specifically applies to transaction privilege tax, "reasonable cause" is defined to mean a reasonable basis
23 for the taxpayer to believe that the tax did not apply to its business activity in this state.

24 Appellant maintains that threats of physical violence by former tenants evicted for nonpayment
25 caused him to abandon the business, and the resulting lack of revenue made it impossible to pay the
transaction privilege tax due. However, the lack of sufficient funds does not constitute reasonable cause

1 for failure to file returns or pay taxes. See *Fitch v. Commissioner*, 34 T.C.M. 233 (1975); see, also
2 *Copper Basin Supply Co., Inc. v. Arizona Department of Revenue*, No. 762-90-S (July 30, 1991, BOTA).
3 Thus, Appellant's financial difficulties do not constitute reasonable cause for his failure to timely file the
4 required Arizona tax returns or pay the tax, and he is liable for the penalties assessed.

5 Appellant next argues that the Department is estopped from collecting the penalties because it
6 endorsed and cashed the check tendered by Appellant's father with the notation that penalties were
7 abated. Appellant argues that the tender and cashing of the check constitute an accord and satisfaction.
8 The elements of an accord and satisfaction are (1) a debtor tenders payment (2) on a disputed claim, (3)
9 communicates that the payment is intended as full satisfaction of the disputed claim, and (4) the creditor
10 accepts the payment. *Town of North Bonneville v. Bencor Corp.*, 32 Wash. App. 144, 646 P.3d 161
11 (Wa.App. 1982) citing *Department of Fisheries v. J-Z Sales Corp.*, 25 Wash.App. 671, 610 P.2d 390
12 (1980).

13 Despite the notation on Appellant's check, case law has continuously held that a taxing authority
14 is not bound by any limiting language on a taxpayer's check. See, e.g., *id*; *Laurins v. CIR*, 889 F.2d 910
15 (9th Cir. 1989); *Whitaker v. CIR*, T.C. Memo. 1994 -109 (U.S. Tax Ct. 1994). "The simple acceptance and
16 cashing of a check tendered by a taxpayer does not represent an accord and satisfaction, or any similar
17 final determination binding upon the government as the recipient of the funds" *Kehew v. C.I.R.*, 46
18 T.C.M. (CCh) 478 T.C. Memo. 1983-354, 1983 WL 14339 (U.S. Tax Ct. 1083) (citations and footnotes
19 omitted). See also *Moskowitz v. U.S.*, 285 F.2d 451, 454 (Ct. Cl. 1961)

20 There are procedures available to taxpayers to mitigate the financial burdens of tax
21 assessments,² but Appellant acted unilaterally in a manner that is not an option under applicable law.
22 Accordingly, the Department is not estopped from collecting the penalties assessed.

23
24
25

² See A.R.S. § 42-1113.

CONCLUSIONS OF LAW

1
2 1. Appellant has not shown that his failure to timely file transaction privilege tax returns and pay
3 the applicable tax was due to reasonable cause and not willful neglect. A.R.S. § 42-1125(A) and (D).

4 2. The Department is not estopped from collecting penalties because it cashed the check from
5 Appellant's father. *Town of North Bonneville v. Bencor Corp.*, 32 Wash. App. 144, 646 P.3d 161
6 (Wa.App. 1982); *Laurins v. CIR*, 889 F2d 910 (9th Cir. 1989); *Whitaker v. CIR*, T.C. Memo. 1994 -109
7 (U.S. Tax Ct. 1994).

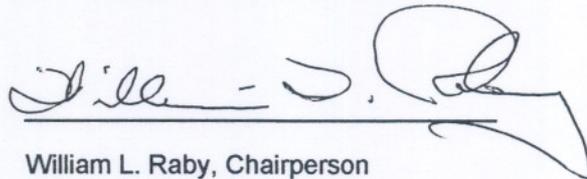
8 ORDER

9 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
10 Department is affirmed.

11 This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
12 unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

13 DATED this 2nd day of September, 2003.

14 STATE BOARD OF TAX APPEALS

15 
16 _____
17 William L. Raby, Chairperson

18 WLR:ALW

19 CERTIFIED

20 Copies of the foregoing
Mailed or delivered to:

21 J. Michael Schaefer
3939 Swenson St., #103
22 Las Vegas, Nevada 89119

23 Michael P. Worley
Assistant Attorney General
Civil Division, Tax Section
24 1275 West Washington Street
Phoenix, Arizona 85007
25